PEARSON ET VIR *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 264. Argued January 28, 1925.—Decided March 2, 1925.

Where the Government erected and used buildings on leased land with the oral permission of the lessee, and subsequently removed them, although the lessors contended that the right to do so had expired by the terms of the lease, *held;* (*a*) That, in the absence of proof that the Government had knowledge of the terms of the lease or of the lessors' acquiescence in the user, no relation

of landlord and tenant existed between the lessors and the United States under the lease from which an agreement of the latter to pay for the property could be implied. P. 426. (*b*) The Government having removed the buildings under claim of right, no agreement to pay as for property taken for public use could be implied. P. 427.

58 Ct. Cls. 485, affirmed.

APPEAL from a judgment of the Court of Claims dismissing the petition on demurrer

Mr. George F. Williams, with whom *Mr. Henry C. Clark* was on the brief, for appellant.

Mr. Solicitor General Beck and *Mr. Alfred A. Wheat,* Special Assistant to the Attorney General, were on the brief for the United States.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This action was brought under the Tucker Act [1] by Margaret W. Pearson and her husband to recover the value of buildings and improvements erected by the War Department on leased premises and removed after the expiration of the lease. The United States demurred to the petition on the ground that it did not state a cause of action within the jurisdiction of the court. The demurrer was sustained, and the petition dismissed. 58 Ct. Cls. 485.

The petition shows the following facts: On September 11, 1917, the claimants leased to the Chamber of Commerce of Jacksonville, Florida, a tract of land, to be used solely for federal camp purposes, for the maximum term of three years. The lease provided that all buildings and improvements placed upon the land during said term by the lessee, its successors or assigns, should re-

[1] Act of March 3, 1887, 24 Stat. 505, c. 359; Jud. Code, § 145.

main "the exclusive property of the lessee, its successors or assigns," and might be removed within the period of three months after the expiration of the lease. Shortly after the execution of the lease the Chamber of Commerce agreed "verbally" with the War Department that the land might be used and occupied as a portion of a training camp for United States troops; and the claimants acquiesced in and consented to its use and occupancy by the United States under and subject to the terms, conditions and provisions of the lease. The land was thereafter included in Camp Joseph E. Johnston. The War Department erected thereon a base hospital, homes for nurses and other buildings, and placed extensive improvements thereon. By a general provision in an Act of March 3, 1919,[2] this and other Camp hospitals were "permanently transferred to the Treasury Department for the use of the Public Health Service," with so much of their equipment, sites and leases, and such other buildings and land as might be required. The lease to the Chamber of Commerce expired on September 11, 1920. On December 9, 1920, the plaintiff's attorney wrote the Commanding Officer of Camp Johnston that by the terms of the lease all right of occupation and of entry and removal of buildings would cease on December 11, and that on that date the property should be finally surrendered to the plaintiffs without further removal or molestation of any of the property remaining thereon; and suggesting a conference in reference to the matter. The Commanding Officer replied to him that the hospital had been transferred to the Public Health Service, to which his letter had been referred, and with which the matter should be taken up. After some further correspondence, the Surgeon General of the Public Health Service, on March 28, 1921, wrote the claimants'

[2] 40 Stat. 1302, c. 98, § 2.

of landlord and tenant existed between the lessors and the United States under the lease from which an agreement of the latter to pay for the property could be implied. P. 426. (*b*) The Government having removed the buildings under claim of right, no agreement to pay as for property taken for public use could be implied. P. 427.

58 Ct. Cls. 485, affirmed.

APPEAL from a judgment of the Court of Claims dismissing the petition on demurrer

Mr. George F. Williams, with whom *Mr. Henry C. Clark* was on the brief, for appellant.

Mr. Solicitor General Beck and *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, were on the brief for the United States.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This action was brought under the Tucker Act[1] by Margaret W. Pearson and her husband to recover the value of buildings and improvements erected by the War Department on leased premises and removed after the expiration of the lease. The United States demurred to the petition on the ground that it did not state a cause of action within the jurisdiction of the court. The demurrer was sustained, and the petition dismissed. 58 Ct. Cls. 485.

The petition shows the following facts: On September 11, 1917, the claimants leased to the Chamber of Commerce of Jacksonville, Florida, a tract of land, to be used solely for federal camp purposes, for the maximum term of three years. The lease provided that all buildings and improvements placed upon the land during said term by the lessee, its successors or assigns, should re-

[1] Act of March 3, 1887, 24 Stat. 505, c. 359; Jud. Code, § 145.

main " the exclusive property of the lessee, its successors or assigns," and might be removed within the period of three months after the expiration of the lease. Shortly after the execution of the lease the Chamber of Commerce agreed " verbally " with the War Department that the land might be used and occupied as a portion of a training camp for United States troops; and the claimants acquiesced in and consented to its use and occupancy by the United States under and subject to the terms, conditions and provisions of the lease. The land was thereafter included in Camp Joseph E. Johnston. The War Department erected thereon a base hospital, homes for nurses and other buildings, and placed extensive improvements thereon. By a general provision in an Act of March 3, 1919,[2] this and other Camp hospitals were " permanently transferred to the Treasury Department for the use of the Public Health Service," with so much of their equipment, sites and leases, and such other buildings and land as might be required. The lease to the Chamber of Commerce expired on September 11, 1920. On December 9, 1920, the plaintiff's attorney wrote the Commanding Officer of Camp Johnston that by the terms of the lease all right of occupation and of entry and removal of buildings would cease on December 11, and that on that date the property should be finally surrendered to the plaintiffs without further removal or molestation of any of the property remaining thereon; and suggesting a conference in reference to the matter. The Commanding Officer replied to him that the hospital had been transferred to the Public Health Service, to which his letter had been referred, and with which the matter should be taken up. After some further correspondence, the Surgeon General of the Public Health Service, on March 28, 1921, wrote the claimants'

[2] 40 Stat. 1302, c. 98, § 2.

attorney, describing the land as the Pearson Tract "occupied by the United States," and stating that: "Owing to the necessity of salvaging certain materials placed upon the property by the Government and now needed elsewhere for hospital purposes, the use of the premises will be required until about May 1, 1921." On April 6 the claimants' attorney replied reiterating the claim that under the terms of the lease all buildings, etc., were then part of the property and legally were no longer subject to removal; and suggesting a conference and proper adjustment of the matter. Without replying to this letter the Public Health Service continued to tear down and remove all the buildings and improvements that had been placed upon the land, and completed such removal by the end of June, 1921.

The petition alleges that the value of the buildings and improvements thus removed exceeds $100,000, and prays judgment against the United States for the full value of the property "removed as aforesaid from said lands in violation of the rights of petitioners."

1. The petition does not allege any contract by the United States, either express or implied in fact, to pay the claimants the value of the buildings and improvements removed by it. Nor does it set forth facts on which such a contract will be implied. It does not appear from the petition that the United States stood in any contractual relation with the claimants, as an assignee of the lease or otherwise. On the contrary it appears that it merely used the land under the oral permission of the Chamber of Commerce. And while the claimants allege, in general terms, that they acquiesced in and consented to such use and occupancy subject to the terms of the lease, it is not shown that the War Department either knew this fact or had any knowledge of the terms of the lease. Therefore, whatever may be the construction and effect of the lease as to the right of

removing buildings and improvements, or the implied obligation of the lessee or its assigns in regard thereto, the petition fails to show that as between the claimants and the United States there existed any relationship of landlord and tenant under the lease from which an agreement to pay for the property can be implied.

2. The petition shows no ground of recovery on an implied agreement upon the part of the Government to pay the claimants for property taken for public use. No recognition of the plaintiffs' title is alleged in the petition. On the contrary the facts shown plainly indicate that the buildings and improvements were removed by the Government as its own property under the claim of right. Under these circumstances no agreement to pay for them can be implied. Whether the Government's claim was well or ill founded, is immaterial. If it was unfounded, and the claimants' property rights violated, the cause of action therefor would be one sounding in tort, for which the Tucker Act affords no remedy. *Klebe* v. *United States,* 263 U. S. 188, 191, and cases cited.

The demurrer was rightly sustained, and the judgment is

Affirmed.